

The following "FREQUENTLY ASKED QUESTIONS REGARDING THE NEW PUBLIC CONSTRUCTION REFORM LAW" were added November 17, 2004. An updated listing of all "Frequently Asked Questions" is available at <http://www.mass.gov/cam/Creform/CRLFAQS.pdf>

8. What are the advertising or public notice requirements if I want to use the same designer for both the feasibility study and the final design of my building project?

ANSWER: Massachusetts General Laws, chapter 7, section 38D governs the advertising requirements for the procurement of design services and provides that "a description of the project, including the specific designer services sought and other information must be included in the public notice". If the scope of work specified in the advertisement for the feasibility study also states that the scope may include final design then you do not have to readvertise for the final design work if you elect to use the same designer. Otherwise, even if you plan to use the same designer for both the feasibility study and the final design, you will need to re-advertise.

9. What is "COMM-PASS" and how can we get access to it?

ANSWER: "Comm-PASS" is the acronym for Commonwealth's Procurement Access & Solicitation System located on the internet at www.comm-pass.com/. Over 2000 Massachusetts public awarding authorities utilize Comm-PASS to post public notice of their procurements on the internet. Awarding authorities have access to post their procurements on Comm-PASS FREE OF CHARGE upon completion of FREE training offered by the Commonwealth's Operational Services Division (OSD). You should contact OSD directly for information on coordinating training.

Access to Comm-PASS to review both current and closed solicitations is available free of charge to vendors and the public. By regularly reviewing Comm-PASS vendors desiring to do business with public entities in the Commonwealth are able to easily access information on potential projects as they are advertised. For a small annual subscription fee vendors that choose to subscribe can also get enhanced services such as instant notification when new postings are added to Comm-PASS for the types of procurements they are interested in.

11. What is the process for selecting an owner's project manager?

ANSWER: While the new law provides that "[t]he public agency shall use a qualifications based selection process to procure the services of an owner's project manager," it does not provide any guidance on how that selection process should be conducted. Under the circumstances, it seems reasonable to assume that utilizing a qualifications based selection process consistent with the process defined in Chapter 7 sections 38A through 38O of the General Laws for the procurement of design services would be a sufficient manner in which to procure the owner's project manager services.

20. What happens if we prequalify fewer than 3 firms to submit bids?

ANSWER: It depends. If prequalification is optional, then you can reject all responses and issue a new RFQ or invite bids in accordance with chapter 149 §§ 44B through 44E. If prequalification is mandatory, however, the new law can be interpreted to require the awarding authority to continue to issue RFQs until it is able to prequalify 3 firms.

21. If there is mandatory prequalification and we are able to prequalify 3 firms in some sub-bidder categories but not all of them, do we have to repeat the prequalification process for all categories?

ANSWER: No, you would only have to repeat the prequalification process for the sub-bidder categories where you were not able to prequalify 3 firms.

22. Is there a "math error" in the new statute since the minimum points required in each prequalification category only add up to 50 points but the statute requires a minimum of 70 points to be prequalified?

ANSWER: No, in addition to the required minimums set forth in each category which total 50 points (management 25, references 15 and capacity 10) firms seeking prequalification must also achieve an additional 20 points across the categories for a total of at least 70 points overall to be prequalified.

31. As a municipal awarding authority, how do the new affirmative marketing program requirements specified in the new law impact the procurement of public design and construction contracts?

ANSWER: For any municipal design or construction project that includes funding provided by the Commonwealth, in whole or in part (such as reimbursements, grants and the like), awarding authorities will need to have MBE and WBE goals incorporated into both the design and construction

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procurement. The applicable MBE and WBE goals will be developed by DCAM in consultation with SOMWBA and published in the Central Register by DCAM, along with information about reductions or waivers of such goals in appropriate circumstances. SOMWBA has oversight responsibility of the affirmative marketing program for state assisted municipal projects. The current goals are 8% MBE and 4% WBE on design contracts and 7.4% MBE and 4% WBE on construction contracts.